



SACHI A. HAMAI  
Chief Executive Officer

## County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 713, Los Angeles, California 90012  
(213) 974-1101  
<http://ceo.lacounty.gov>

June 15, 2018

To: Supervisor Sheila Kuehl, Chair  
Supervisor Hilda L. Solis  
Supervisor Mark Ridley-Thomas  
Supervisor Janice Hahn  
Supervisor Kathryn Barger

From: Sachi A. Hamai  
Chief Executive Officer

Board of Supervisors  
HILDA L. SOLIS  
First District

MARK RIDLEY-THOMAS  
Second District

SHEILA KUEHL  
Third District

JANICE HAHN  
Fourth District

KATHRYN BARGER  
Fifth District

### **REVISED MOTION TO SUPPORT SB 10 (HERTZBERG) IF AMENDED TO ALIGN SB 10 TO THE COUNTY'S NEEDS (ITEM NO. 7, AGENDA OF JUNE 19, 2018)**

Item No. 7 on the June 19, 2018, agenda is a revised motion by Supervisors Kuehl and Ridley-Thomas recommending that the Board of Supervisors direct the Chief Executive Office through the Legislative Affairs Division, in collaboration with County Counsel, to prepare and submit a 5-signature letter to the Governor, Senator Bob Hertzberg, and the County's Legislative Delegation in support of SB 10, if amended to further align SB 10 to the County's needs, including:

1. **Funding:** The County will request that SB 10 be amended to require the State to provide adequate funding for additional staffing for all County departments impacted by the requirements of SB 10 and to fund costs associated with the expedited time frame for mandated provisions related to pretrial assessment, supervision, and the necessary upgrades to information systems and technology upgrades as required under SB 10; and
2. **Local Control:** The County will request amendments to allow for appropriate local control relating to the reform and implementation of the County's pretrial release system, including but not limited to, the ability to determine the amount of time sufficient and appropriate to process individuals seeking pretrial release at the earliest possible time. This is consistent with the Board's approved motion of March 8, 2017, which called for the creation and use of an evidence-based risk assessment tool, and development of a robust pretrial services program, with the goal of ensuring fairness in our pretrial release system while also protecting public safety.

There is no existing Board-approved policy related to statewide bail reform. **Therefore, approval of this motion is a matter of Board policy determination.**

## **SB 10 - Bail and Pretrial Release**

**SB 10 (Hertzberg)**, which as amended on September 6, 2017, would, beginning January 1, 2020, reform the State's pretrial release procedures to require: 1) newly established county pretrial services agencies to conduct pretrial risk assessments of arrested persons; and 2) that judges, taking into consideration the pretrial risk assessments and recommendations, set monetary bail only in limited circumstances and with the least restrictive options.

Current law provides for the procedures and conditions by which a judge or magistrate approves and establishes bail, and issues an order for the appearance and release of an arrested person. Under existing law, when considering bail options or whether to release a defendant on his or her own recognizance, a judge or magistrate is required to take into consideration the public's safety, the seriousness of the offense charged, the defendant's previous criminal record, and the probability of his or her appearing at a trial or hearing of the case.

SB 10 would require counties to establish a pretrial services agency which would conduct pretrial risk assessments of arrested persons, except individuals convicted of specified violent felonies. Under this measure, the pretrial services report would include the results of the risk assessment and recommendations on conditions of release for the person. Upon receipt of this report, a magistrate, judge, or court commissioner would be required to issue an oral or written order to release the person, with or without release conditions, subject to the person signing a specified release agreement. If the judge or magistrate determines that a pretrial release will not reasonably assure the appearance of the person in court, SB 10 would require they set monetary bail at the least restrictive level needed. The judge or magistrate may allow the person to execute an unsecured appearance bond, execute a secured appearance bond, or deposit a percentage of the sum mentioned in the order setting monetary bail. Finally, this measure would require the Judicial Council of California to adopt rules regarding pretrial risk assessment information and the imposition of pretrial release terms and conditions.

### **Status**

On August 25, 2017, Governor Brown, Chief Justice Cantil-Sakauye, Senator Hertzberg, and Assemblymember Bonta jointly announced their commitment to work together through the fall of 2017 on reforming the California's bail system, noting that SB 10 would be revisited in early 2018.

SB 10 was referred to the Assembly Appropriations Committee on September 6, 2017, where it is pending a hearing. The measure must pass the committee by August 17, 2018 to proceed.

### FY 2018-19 State Budget

As part of the FY 2018-19 State Budget considerations, the Assembly and Senate Budget Committees both approved a \$50.0 million set-aside to implement the pending California Supreme Court decision related to bail, pursuant to the State appellate court's ruling in the Kenneth Humphrey case, which required California judges to consider a defendant's ability to pay when setting bail beginning in January 2019. The Committees noted that this set-aside would provide some funding for any bail reform legislation that may pass in the coming year.

On June 14, 2018, the Assembly and Senate passed the FY 2018-19 State Budget bill, SB 840 (Mitchell), which included the above \$50.0 million set-aside to implement the pending California Supreme Court decision related to bail. The Governor is expected to take action on the final budget by June 30, 2018.

### Support / Opposition

SB 10 is co-sponsored by the: American Civil Liberties Union; Anti-Recidivism Coalition; Californians for Safety and Justice; California Public Defenders Association; Ella Baker Center for Human Rights; Silicon Valley De-Bug; and Western Center on Law and Poverty.

SB 10 is supported by over 30 organizations, including the American Academy of Pediatrics; California Youth Empowerment Network; City and County of San Francisco; Drug Policy Alliance; and Homeboy Industries, among others.

SB 10 is opposed by several bail bond associations; the California District Attorneys Association; California State Association of Counties; Los Angeles County District Attorney; and the Orange County Board of Supervisors, among others.

### County Analysis

#### Probation

The Probation Department reports that it would cost an estimated \$59.0 million annually to implement the basic requirements of SB 10. These estimates are reflective of the minimum costs to implement a pretrial services agency as mandated by the legislation and related supervised release services. Probation notes that these estimates are not reflective of additional costs, such as related legal prosecution and defense costs, nor potential supportive services that a pretrial individual may require under his or her release terms.

#### District Attorney

The Office of the District Attorney (DA) reports that their office wholly supports bail reform and agrees, in principle, with the fundamental goals of SB 10. However, the DA notes that the process set forth in the legislation, as currently written, is unwieldy, expensive, and

obviates the constitutional rights of victims. The DA proactively drafted proposed legislation in response to SB 10 that accomplishes the goals of SB 10 and those articulated by the Chief Justice Working Group Pretrial Detention Reform, which after a year of studying the current bail system released recommendations for reform. The DA reports that their proposal establishes a streamlined process that will assure early release of non-violent, non-serious offenders. The District Attorney, Jackie Lacey, articulated the intent and purpose of their proposed legislation in her letter to Senator Robert Hertzberg dated January 11, 2018. The DA's proposed legislation was reviewed and endorsed by the California District Attorneys Association Legislative Committee in May 2018.

The Office of the District Attorney indicates that their proposal demonstrates a common purpose and shared goals in achieving bail reform; however, as noted below, the processes proposed are significantly different:

- *Early Release of Arrestees.* The DA reports that SB 10 creates a post-arrest, pre-filing process that would require additional facilities, staffing and support to implement at great expense. The projected cost of this process for the DA alone could exceed \$100.0 million annually, depending upon how the process is implemented. It would require the participation of prosecutors, defense attorneys and bench officers within hours of arrest, before a criminal case has been submitted to the prosecutor for filing consideration. This would bring prosecutors into the process before investigative reports have even been written by the arresting agency. The DA further notes that it appears to: 1) create a need for representation of arrestees before they are criminally charged; and 2) obviates the rights of victims by creating a timeline that fails to take into account the trauma and aftermath of victimization, which can include medical and psychological treatment, as well as the recovery of necessary physical evidence.

The District Attorney reports that their proposal would: 1) provide risk assessment of all persons arrested for felony and aggravated misdemeanors offenses, without creating an entirely new post arrest, pre-filing hearing; 2) facilitate release of persons arrested for non-violent, non-serious offenses within 24 hours of arrest; and 3) establish a right to a detention hearing at or after arraignment for all other arrestees, which eliminates the costs of expansion inherent in the SB 10 process. Under the DA's proposal, courts would retain broad discretion, at or after arraignment, to determine whether persons who do not qualify for early release and who remain in custody will be released with or without conditions, or remain preventively detained. The DA indicates that having the hearings at or after arraignment eliminates in large part the expanded need for facilities, staffing and support as required by the SB 10 process.

- *Discriminatory Effect of Money Bail.* The Office of the DA reports that SB 10 would eliminate all money bail, by abolishing the bail schedule. The DA notes that this leaves courts without the means for addressing failures to appear or other violations of court orders. By contrast, the DA's proposal modifies the bail schedule to reflect ranges and mandates consideration of an arrestee's financial resources in setting bail. The

DA further notes that their proposal authorizes the return of some portion of bail deposits to the arrestee upon the conclusion of the case, and application of the bail deposits to fines imposed by the court upon conviction.

The Office of the DA has drafted language for their proposed bail reform provisions that can be shared with interested stakeholders, and as noted above, has been previously shared with Senator Hertzberg.

#### Public Defender/ Alternate Public Defender

The Office of the Public Defender reports (PD) that it supports SB 10 and requests the County to advocate for the following:

- Language specifically limiting the circumstances under which a defendant may be detained pretrial, prohibiting the use of cash bail where alternatives are available, and limiting any cash bail set to the smallest amount necessary to address return to court and public safety concerns. The PD reports that their experience has been that, at least historically, discretion in the bail context has resulted in the court simply setting bail per the bail schedule and a correspondingly tiny rate of release;
- Language upholding restrictions on “no bail” orders in accordance with Article 1, Section 12 of California’s Constitution, felony cases where evidence shows that serious injury is likely to result from release; and
- Language creating a “clear and convincing” standard of proof for evidence sufficient to justify the imposition of cash bail.

The Public Defender reports it will need additional resources to fund the required additional staffing that is anticipated under the current language of the bill. Based on the requirements of SB 10 as currently written, the PD indicates that establishing robust pretrial services in their Department is estimated to cost \$5.0 million annually.

The Office of the Alternate Public Defender reports that they support SB 10 and do not see any major issues of costs for their office.

#### The Office of Diversion and Reentry

The Office of Diversion and Reentry (ODR) indicates that bail reform efforts targeting persons booked into jail who suffer from serious or chronic mental illness, or other conditions that render them medically fragile, would help hasten their connection to community-based treatment and housing services. ODR notes that this approach, in addition to being more humane and cost effective, has been determined to reduce recidivist behaviors and improve health outcomes. Clients served by ODR are typically living in poverty, have experienced years of homelessness, and lack the resources to access the money bail system to secure their release.

### Sheriff's Department

The Sheriff's Department reports that SB 10 should lead to fewer individuals detained in jail; however, unless the legislation results in dramatic jail population reductions, it would not result in notable savings. The Sheriff's Department indicates that given current capacity issues, any modest reduction in jail population would instead allow the Department to adjust their percentage release policies accordingly.

### County Counsel

On March 8, 2017, the Board adopted a motion directing key departments and stakeholders to review the County's current bail and pretrial release practices; and to review options to reform the County's bail system, including the establishment of a Pretrial Services Division, an evidence-based risk assessment tool, and potential for alternatives to the use of bail bondsmen.

County Counsel reports that based on a review of SB 10 and discussions with the various stakeholders, County Counsel has identified that the proposed law does not include a funding mechanism to account for the costs associated with operating a pretrial services agency. This includes costs for mandated pretrial assessment and supervision. Additionally, County Counsel anticipates costs to upgrade the information systems for pretrial services to access criminal history and court records. Further technology will be required for all justice partners to enable immediate access to the pretrial services agency's reports. County Counsel further notes that the expedited time frames outlined in the bill may impact the County departments that are required to conduct pretrial assessment, supervision services, and bail hearings in less time than currently allowed.

Accordingly, this office and County Counsel recommend amendments to SB 10 that would provide for appropriate local control and adequate funding for the legislation's mandated pretrial assessment and supervision, and necessary information systems and technology upgrades required to comply. If the County moves forward with advocacy on SB 10, County Counsel defers to the impacted Departments to address other amendments necessary for their individual operations, inclusive of the ones noted in this memo.

### Conclusion

There is no existing Board-approved policy related to statewide bail reform. **Therefore, approval of this motion is a matter of Board policy determination.**

SAH:JJ:MR  
OR:PC:lm

c: Executive Office, Board of Supervisors  
County Counsel



SACHI A. HAMAI  
Chief Executive Officer

## County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 713, Los Angeles, California 90012  
(213) 974-1101  
<http://ceo.lacounty.gov>

June 4, 2018

Board of Supervisors  
HILDA L. SOLIS  
First District

MARK RIDLEY-THOMAS  
Second District

SHEILA KUEHL  
Third District

JANICE HAHN  
Fourth District

KATHRYN BARGER  
Fifth District

To: Supervisor Sheila Kuehl, Chair  
Supervisor Hilda L. Solis  
Supervisor Mark Ridley-Thomas  
Supervisor Janice Hahn  
Supervisor Kathryn Barger

From: Sachi A. Hamai  
Chief Executive Officer

### **MOTION TO SUPPORT SB 10 (HERTZBERG) AND REQUEST AMENDMENTS TO ALIGN SB 10 TO THE COUNTY'S NEEDS (ITEM NO. 3, AGENDA OF JUNE 6, 2018)**

Item No. 3 on the June 6, 2018, agenda is a motion by Supervisors Kuehl and Ridley-Thomas recommending that the Board of Supervisors direct the Chief Executive Office through the Legislative Affairs Division, in collaboration with County Counsel, to prepare and submit a 5-signature letter to the Governor, Senator Bob Hertzberg, and the County's Legislative Delegation in support of Senate Bill 10, and request amendments that will help further align SB 10 to the County's needs.

There is no existing Board-approved policy related to statewide bail reform. **Therefore, approval of this motion is a matter of Board policy determination.**

#### **SB 10 - Bail: Pretrial Release**

**SB 10 (Hertzberg)**, which as amended on September 6, 2017, would, beginning January 1, 2020, reform the State's pretrial release procedures to require: 1) newly established county pretrial services agencies to conduct pretrial risk assessments of arrested persons; and 2) that judges, taking into consideration the pretrial risk assessments and recommendations, set monetary bail only in limited circumstances and with the least restrictive options.

Current law provides for the procedures and conditions by which a judge or magistrate approves and establishes bail, and issues an order for the appearance and release of an arrested person. Under existing law, when considering bail options or whether to release a defendant on his or her own recognizance, a judge or magistrate is required to take into consideration the public's safety, the seriousness of the offense charged, the defendant's previous criminal record, and the probability of his or her appearing at a trial or hearing of the case.

SB 10 would require counties to establish a pretrial services agency which would conduct pretrial risk assessments of arrested persons, except individuals convicted of specified violent felonies. Under this measure, the pretrial services report would include the results of the risk assessment and recommendations on conditions of release for the person. Upon receipt of this report, a magistrate, judge, or court commissioner would be required to issue an oral or written order to release the person, with or without release conditions, subject to the person signing a specified release agreement. If the judge or magistrate determines that a pretrial release will not reasonably assure the appearance of the person in court, SB 10 would require they set monetary bail at the least restrictive level needed. The judge or magistrate may allow the person to execute an unsecured appearance bond, execute a secured appearance bond, or deposit a percentage of the sum mentioned in the order setting monetary bail. Finally, this measure would require the Judicial Council of California to adopt rules regarding pretrial risk assessment information and the imposition of pretrial release terms and conditions.

#### Status

On August 25, 2017, Governor Brown, Chief Justice Cantil-Sakauye, Senator Hertzberg, and Assemblymember Bonta jointly announced their commitment to work together through the fall of 2017 on reforming the California's bail system, noting that SB 10 would be revisited in early 2018.

SB 10 was referred to the Assembly Appropriations Committee on September 6, 2017, where it is pending a hearing. The measure must pass the committee by August 17, 2018 to proceed.

#### FY 2018-19 State Budget

In the last two weeks, the Assembly and Senate Budget Committees both approved a \$50.0 million set-aside to implement the pending California Supreme Court decision related to bail, pursuant to the State appellate court's ruling in the Kenneth Humphrey case, which required California judges to consider a defendant's ability to pay when setting bail beginning in January 2019. The Committees note that this set-aside would provide some funding for any bail reform legislation that may pass in the coming year. This item will be considered as part of the FY 2018-19 State Budget, which must be adopted by the Legislature by June 15, 2018, and sent to the Governor for consideration.

#### Support / Opposition

SB 10 is co-sponsored by the: American Civil Liberties Union; Anti-Recidivism Coalition; Californians for Safety and Justice; California Public Defenders Association; Ella Baker Center for Human Rights; Silicon Valley De-Bug; and Western Center on Law and Poverty.

SB 10 is supported by over 30 organizations, including the American Academy of Pediatrics; California Youth Empowerment Network; City and County of San Francisco; Drug Policy Alliance; Homeboy Industries; among others.



SB 10 is opposed by several bail bond associations, including the California District Attorneys Association; California State Association of Counties and the Los Angeles County District Attorney; Orange County Board of Supervisors; among others.

### **County Analysis**

#### **Probation**

The Probation Department reports that it would cost an estimated \$59.0 million annually to implement the basic requirements of SB 10. These estimates are reflective of the minimum costs to implement a pretrial services agency as mandated by the legislation and related supervised release services. Probation notes that these estimates are not reflective of additional costs, such as related legal prosecution and defense costs, nor potential supportive services that a pretrial individual may require under his or her release terms.

#### **District Attorney**

The Office of the District Attorney (DA) reports that their office wholly supports bail reform, and agrees in principle with the fundamental goals of SB 10. However, the DA notes that the process set forth in the legislation as currently written is unwieldy, expensive, and obviates the constitutional rights of victims. The DA proactively drafted proposed legislation in response to SB 10 that accomplishes the goals of SB 10 and those articulated by the Chief Justice Working Group Pretrial Detention Reform, which after a year of studying the current bail system released recommendations for reform. The DA reports that their proposal establishes a streamlined process that will assure early release of non-violent, non-serious offenders. The District Attorney, Jackie Lacey, articulated the intent and purpose of their proposed legislation in her letter to Senator Robert Hertzberg dated January 11, 2018. The DA's proposed legislation was reviewed and endorsed by the California District Attorneys Association Legislative Committee in May 2018.

The Office of the District Attorney indicates that their proposal demonstrates a common purpose and shared goals in achieving bail reform; however, as noted below, the processes proposed are significantly different:

- *Early Release of Arrestees.* The DA reports that SB 10 creates a post-arrest, pre-filing process that would require additional facilities, staffing and support to implement at great expense. The projected cost of this process for the DA alone could exceed \$100.0 million annually, depending upon how the process is implemented. It would require the participation of prosecutors, defense attorneys and bench officers within hours of arrest, before a criminal case has been submitted to the prosecutor for filing consideration. This would bring prosecutors into the process before investigative reports have even been written by the arresting agency. The DA further notes that it appears to: 1) create a need for representation of arrestees before they are criminally charged; and 2) obviates the rights of victims by creating a timeline that fails to take

into account the trauma and aftermath of victimization, which can include medical and psychological treatment, as well as the recovery of necessary physical evidence.

- The District Attorney reports that their proposal would: 1) provide risk assessment of all persons arrested for felony and aggravated misdemeanor offenses, without creating an entirely new post arrest, pre-filing hearing; 2) facilitate release of persons arrested for non-violent, non-serious offenses within 24 hours of arrest; and 3) establish a right to a detention hearing at or after arraignment for all other arrestees, which eliminates the costs of expansion inherent in the SB 10 process. Under the DA's proposal, courts would retain broad discretion, at or after arraignment, to determine whether persons who do not qualify for early release and who remain in custody will be released with or without conditions, or remain preventively detained. The DA indicates that having the hearings at or after arraignment eliminates in large part the expanded need for facilities, staffing, and support as required by the SB 10 process.
- *Discriminatory Effect of Money Bail.* The Office of the DA reports that SB 10 would eliminate all money bail, by abolishing the bail schedule. The DA notes that this leaves courts without the means for addressing failures to appear or other violations of court orders. By contrast, the DA's proposal modifies the bail schedule to reflect ranges and mandates consideration of an arrestee's financial resources in setting bail. The DA further notes that their proposal authorizes the return of some portion of bail deposits to the arrestee upon the conclusion of the case, and application of the bail deposits to fines imposed by the court upon conviction.

The Office of the DA has drafted language for their proposed bail reform provisions that can be shared with interested stakeholders, and as noted above, has been previously shared with Senator Hertzberg.

#### Public Defender/ Alternate Public Defender

The Office of the Public Defender reports (PD) that it supports SB 10 and requests the County to advocate for the following:

- Language specifically limiting the circumstances under which a defendant may be detained pretrial, prohibiting the use of cash bail where alternatives are available, and limiting any cash bail set to the smallest amount necessary to address return to court and public safety concerns. The PD reports that their experience has been that, at least historically, discretion in the bail context has resulted in the court simply setting bail per the bail schedule and a correspondingly tiny rate of release;
- Language upholding restrictions on "no bail" orders in accordance with Article 1, Section 12 of California's Constitution, felony cases where evidence shows that serious injury is likely to result from release; and

- Language creating a “clear and convincing” standard of proof for evidence sufficient to justify the imposition of cash bail.

The Public Defender reports it will need additional resources to fund the required additional staffing that is anticipated under the current language of the bill. Due to the lack of specificity currently available for the new County program, the Public Defender cannot provide specific details regarding the costs.

The Office of the Alternate Public Defender reports that they support SB 10 and do not see any major issues of costs for their office.

#### Sheriff's Department

The Sheriff's Department reports that SB 10 should lead to fewer individuals detained in jail; however, unless the legislation results in dramatic jail population reductions, it would not result in notable savings. The Sheriff's Department indicates that given current capacity issues, any modest reduction in jail population would instead allow the Department to adjust their percentage release policies accordingly.

#### County Counsel

On March 8, 2017, the Board adopted a motion directing key departments and stakeholders to review the County's current bail and pretrial release practices; and to review options to reform the County's bail system, including the establishment of a Pretrial Services Division, an evidence-based risk assessment tool, and potential for alternatives to the use of bail bondsmen.

County Counsel reports that based on a review of SB 10 and discussions with the various stakeholders, County Counsel has identified that the proposed law does not include a funding mechanism to account for the costs associated with operating a pretrial services agency. This includes costs for mandated pretrial assessment and supervision. Additionally, County Counsel anticipates costs to upgrade the information systems for pretrial services to access criminal history and court records. Further technology will be required for all justice partners to enable immediate access to the pretrial services agency's reports. County Counsel further notes that the expedited time frames outlined in the bill may impact the County departments that are required to conduct pretrial assessment, supervision services, and bail hearings in less time than currently allowed.

Accordingly, County Counsel recommends amendments to SB 10 that would provide adequate funding for the legislation's expedited time frames for mandated pretrial assessment and supervision and necessary information systems and technology upgrades required to comply. If the County moves forward with advocacy on SB 10, County Counsel defers to the impacted Departments to address other amendments necessary for their individual operations, inclusive of the ones noted in this memo.

Each Supervisor  
June 4, 2018  
Page 6

**Conclusion**

There is no existing Board-approved policy related to statewide bail reform. **Therefore, approval of this motion is a matter of Board policy determination.**

SAH:JJ:MR  
OR:PC:sy

c: Executive Office, Board of Supervisors  
County Counsel